

**R. NATESAN v.
K. THANALETUMI & ANOR.**

[Orig. Civ. Juris. (Wilson, J.) November 19, 1951]

[K. L. — Civil Suit No. 233 of 1950]

Infant—Minor representing to be Major and thus entering into Contract—Whether estopped from pleading Minority in avoidance of Contract.

When an infant has induced a person to Contract with her by means of a false representation that she was of full age, she is not estopped from pleading her infancy in avoidance of the Contract.

Cases referred to:—

- (1) *Ram Ratun Singh v. Shew Nandan Singh* I.L.R. 29 Cal. 126.
- (2) *Ganesh La'La v. Bapu & Ors.* I.L.R. 21 Bom. 198.
- (3) *Khan Gul v. Lakha Singh* A.I.R. (1928) Lahore 609.

CIVIL SUIT.

K. L. Devaser for the plaintiff.

A. J. Bostock Hill for 1st defendant.

M. Edgar for 2nd defendant.

Cur. Adv. Vult.

Wilson, J. :—The plaintiff sues the two defendants on an agreement dated the 28th March, 1950. entered into by the three parties. The 1st defendant in her statement of defence alleged that at the time when she signed the agreement she was a minor and for that reason the agreement is void so far as she is concerned. The only evidence called so far has been in regard to this defence, and it is on this point only that I am required at this stage to give a decision.

No birth certificate has been produced, but on the evidence I am satisfied that it is probable that she was a minor at the material time. I would go as far as to say that I am so satisfied beyond all reasonable doubt as having seen the girl I think it is quite likely that she is still a minor to-day.

Mr. Devaser has raised a legal point that even if she was a minor she is estopped from so pleading, because she has represented herself as being of full age. In the first place I cannot find that there was any such representation prior to the signing of the agreement and for that reason I would find that the plea of estoppel must fail. In the second place, even if there was any such representation I would still find that the plea of estoppel must fail. Mr. Devaser has based his submission on two cases. The first one is *Ram Ratun*

Singh v. Shew Nandan Singh⁽¹⁾. The facts in that case seem to me to be quite different. The minor was a plaintiff suing through his guardian to recover again certain sums of money which had already been paid to him personally. To me it appears that the action was in itself fraudulent.

The second case was *Ganesh La'La v. Bapu & Ors.*⁽²⁾. In this case the minor had executed a deed of sale containing a recital that he was twenty-two years of age.

There is, however, a third case cited by Mr. Bostock Hill, *Khan Gul v. Lakha Singh*⁽³⁾. In this case a number of questions were put to a Full Bench of five judges. One question was whether a minor, who, by falsely representing himself to be a major, has induced a person to enter into a contract, is estopped from pleading his minority to avoid the contract. All five judges agreed that this particular question must be answered in the negative. On the basis of the decision in that case I would hold that even if the 1st defendant had induced the plaintiff to enter into the the agreement with her and the 2nd defendant by falsely representing that she was of full age she is not estopped from avoiding the agreement by pleading her minority.

For these reasons I give judgment for the 1st defendant with costs. The claim against the second defendant will proceed on a date to be fixed.

Order accordingly.

SULAIMAN BIN ROSAH & 8 ORS.

v.

PUBLIC PROSECUTOR

[App. Crim. Juris. (Wilson, J.) October 23, 1951]

[K. L. — Criminal Appeal No. 42 of 1951]

Criminal Procedure—Criminal Procedure Code, ss. 173 and 305—Plea of Guilty before a Magistrate—Appeal against Convictions and Sentences—No right of Appeal.

The appellants gave notice of appeal against the convictions and sentences passed upon them by the 2nd Magistrate, Kuala Lumpur. They were recorded as having pleaded guilty to charges against them. In the original Memorandum of Appeal they alleged that the charges were wrongly framed; they did not understand the seriousness of the charge against them; that the Magistrate should not have accepted their pleas of guilty and the sentences were excessive. Subsequently further grounds of appeal were filed. At the hearing of the appeal Counsel for the appellants relied entirely on the further grounds of appeal. In the further grounds of appeal it was not alleged that the sentences were excessive. It was recorded that the charges were read over and explained and that the accused pleaded guilty and understood the nature and consequences of their pleas.

Held, that section 305 of the Criminal Procedure Code, gave no right of appeal to a person who had pleaded guilty except as to the extent of the legality of the sentence. Appeals dismissed.

Cases referred to:—

- (1) *Rex v. West Kent Quarter Sessions Appeals Committee — Ex parte Files* (1951) 2 T.L.R. 470.
- (2) *Public Prosecutor v. Nahat Singh* (1939) M.L.J. 239.

CRIMINAL APPEAL.

K. L. Devaser for the appellants.

B. Sheldon (D.P.P.) for the Public Prosecutor.
Cur. Adv. Vult.

Wilson, J. : — The nine appellants gave notice of appeal against the convictions and sentences passed upon them by the 2nd Magistrate, Kuala Lumpur. They are recorded as having pleaded guilty to the charges against them. In the original Memorandum of Appeal they alleged that the charges were wrongfully framed; they did not understand the seriousness of the charge against them; that the Magistrate should not have accepted their pleas of guilty and that the sentences were excessive. Subsequently further grounds of appeal were filed by Mr. Devaser on their behalf. At the hearing of the appeal Mr. Devaser stated that he relied entirely on the further grounds of appeal. In the further grounds of appeal it is not alleged that the sentences were excessive. It may be taken therefore that the appeals against sentences have been dropped and it may be wisely so.

So far as the first three appellants are concerned Mr. Devaser has argued that there was a joint trial and he has argued that each of the appellants was charged with a separate offence and that the offences did not arise out of the same transaction. I think the particulars set out in the charges do indicate that the offences of which the appellants were convicted did not arise out of the same transaction and if there was a joint trial I am of opinion that the convictions would have been bad. What in fact happened was that the three appellants were brought together before the Magistrate and presumably stood in the dock at the same time. It is recorded that charges were read over and explained and that the accused pleaded guilty and understood the nature and consequences of their pleas. Under section 173 of the Criminal Procedure Code when an accused person is brought before the Court the charge shall be read and explained to him and he shall be asked whether he is guilty of the offence charged or claims trial. Neither of the appellants

claimed to be tried, and in my opinion, they cannot be said that they were tried jointly. It has also been argued that the Magistrate recorded a joint plea of guilty. The Magistrate has not recorded the proceedings as clearly as he might have done, but I am quite satisfied that the Magistrate read each charge separately, satisfied himself that each of the appellants pleaded guilty to the offence with which he was charged and satisfied himself that all three appellants understood the nature and consequences of their individual pleas. Under section 305 of the Criminal Procedure Code when an accused person has pleaded guilty and been convicted by a Magistrate on such a plea there shall be no appeal except as to the extent of the legality of the sentence. If any authority were necessary for holding that these three appellants had no right of appeal to this Court I would refer to the case of *Rex v. West Kent Quarter Sessions Appeals Committee — Ex parte Files*⁽¹⁾.

So far as the 4th appellant is concerned it has been urged that the Magistrate should have recorded the facts, and reference has been made to the case of *Public Prosecutor v. Nahat Singh*⁽²⁾. In the present case it is quite clear from the grounds of judgment that the learned Magistrate was well aware of the facts and I am not prepared to interfere with the conviction which was on a plea of guilty on the grounds that at the time of convicting this appellant he did not apparently record the facts.

The 5th and 6th appellants, it is alleged, were tried jointly and it has been urged that their convictions were bad for the same reasons as were urged against the convictions of the 1st, 2nd and 3rd appellants. For the same reasons I find that these two appellants are not entitled to appeal against their convictions. So far as the 7th, 8th and 9th appellants are concerned there is again the allegation of a joint trial and I find that it was not a joint trial for the reasons already explained. It is further alleged that before a plea was accepted the Magistrate must be satisfied that the accused understood the charge. So far as each charge is concerned it is stated that the charges were read over and explained. The mere fact that the Magistrate has not recorded that he is satisfied that the 7th and 9th appellants understood the charge does not mean that he was not so satisfied more particularly as the point was clearly in his mind as he has recorded that the 8th appellant understood the two charges against him perfectly. One further point was taken in regard to these last three appellants, and that was that there is no record of what the Orders were which the appellants are alleged to have disobeyed. In my opinion there is

no merit in this point. The appellants are alleged to have failed to take certain action contrary to Orders issued. By pleading guilty they clearly knew what the orders were and that they had disobeyed the orders. If they did not know what the orders were or wished to state that they had not received any orders which they disobeyed they would have pleaded not guilty.

The appeal of each of the appellants is dismissed.

Appeals dismissed.

THE FIRM OF T. AR. CT.

v.

THE FIRM OF S. V. K. R.

[Orig. Civ. Juris. (Spenser Wilkinson, J.) October 9, 1951]

[Penang — Civil Suit No. 192 of 1949]

Agency — Agencies during occupation period — Thavanai letters — Money borrowed on Thavanai letters — Working of Chettiar firms.

Money was borrowed on Thavanai letters and repaid during the occupation.

This was a case where two Chettiar firms worked as a pair — a smaller firm working with a larger firm — and the agent of the smaller firm worked under the general supervision of the agent of the larger firm. In the circumstances of the case a payment made to the supervising agent who was looking after the interests of the smaller firm was held to be a payment to the ostensible agent of the smaller firm.

CIVIL SUIT.

F. G. Pooley for the plaintiffs.

R. D. Hume and *Ong Huck Lim* for the defendants.

The facts of the case appear sufficiently from the judgment.

Cur. Adv. Vult.

Spenser Wilkinson, J. : — In September, 1941 the defendant firm borrowed a sum of \$5,000 on two *Thavanai* letters, each dated 16th September, 1941 in the following circumstances :

Sithambaram Chettiar, who was then the agent of the defendant firm approached one Annamalai Chettiar, at that time the agent of the firm of O.R.M.M.SP.SV. (which firm I shall refer to herein as O.R.M.) for a loan of \$5,000 on a *Thavanai* letter. Annamalai Chettiar gave Sithambaram Chettiar a cheque in favour of the defendant firm for \$5,000 drawn by the plaintiff firm (T.AR.CT.) by their then local agent Arunasalam Chettiar. Annamalai Chettiar gave to Sithambaram Chettiar two draft *Thavanai* letters, one for \$2,000 and one for \$3,000 for him to

copy and sign, which he did. It is in respect of the latter for \$3,000 that this action is now brought.

On the 8th December, 1941 when War broke out in Malaya Annamalai Chettiar of O.R.M. and Arunasalam Chettiar the agent of T.AR.CT., together went and lived at the Waterfall Temple and took with them there most of the account books and documents of their respective firms. They came to town daily for the next few days. On the 11th December, 1941, when Penang was bombed, Arunasalam Chettiar was killed and No. 140, Penang Street, the place of business of O.R.M. and T.AR.CT. and other Chettiar firms was destroyed by a direct hit. Thereafter Annamalai Chettiar carried on the joint businesses of the firms of O.R.M. and T.AR.CT. and continued to do so until October, 1946, when he returned to India.

On the 25th June, 1943 the defendants paid to Annamalai Chettiar the principal and interest then due in respect of the loan of \$3,000 and received back the appropriate *Thavanai* letter cancelled by Annamalai Chettiar, purporting to act on behalf of the firm of T.AR.CT. The plaintiffs' contention in this action is that the defendants have not repaid the money to any person authorised to receive it, and they are, therefore, still liable to T.AR.CT. for the money.

The *Thavanai* letter upon which the action is brought acknowledges the receipt of the sum of \$3,000 and states: "We have credited this three thousand dollars in the name of T.AR.CT. Charity Trust Fund through you from current date.". The letter concludes with these words:—

"We hereby agree to pay the principal and interest to your order at Penang on due date and get back this letter endorsed."

At the top left-hand corner of the letter appears the *vilasam* of the defendant firm as makers of the letter and at the top right-hand corner it has as addressee T.AR.CT., Penang. I accept the evidence which was given to the effect that the expression "you" and "your" in the body of the letter refers to the addressee T.AR.CT. This is a usual form of *Thavanai* letter, and I do not think that the letter in question really admits any other reasonable construction.

In my opinion, therefore, it is clear on the face of the letter that it was the duty of the defendants to repay this money to the firm of T.AR.CT. or to an agent of that firm with authority to receive the money on their behalf.

Some of the witnesses for the defendants gave evidence to the effect that where there is a loan upon such a letter the money is always repayable to the